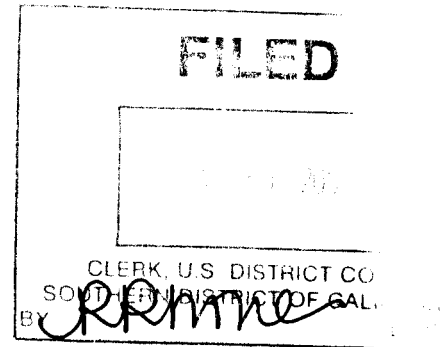


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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GERARDO DIAZ-RIOS, )  
 )  
Defendant. )  
 )  
\_\_\_\_\_ )

Magistrate Case No. 08MJ1215

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

**(Pre-Indictment Fast-Track Program)**

**IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caleb E. Mason, Assistant United States Attorney, and defendant GERARDO DIAZ-RIOS, by and through and with the advice and consent of defense counsel, Holly A. Sullivan, that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C. § 1324(a)(1)(A)(i) and (v)(II).

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//

CEM:es

1           2.       Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3.       Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before May 21, 2008.

6           4.       The material witnesses, Sigifrido Rivera-Sandoval, Marcos Alberto Carpio-Teposte  
7 and Felipe Lua-Bustos, in this case:

8                   a.       Are aliens with no lawful right to enter or remain in the United States;

9                   b.       Entered or attempted to enter the United States illegally on or about  
10 April 18, 2008;

11                  c.       Were found in rural terrain near the international border with Mexico and  
12 were being guided by defendant, and defendant knew of the fact that they were aliens with no lawful  
13 right to enter or remain in the United States;

14                  d.       Were paying or having others pay on their behalf an undisclosed amount of  
15 money to others to be brought into the United States illegally and/or transported illegally to their  
16 destination therein; and,

17                  e.       May be released and remanded immediately to the Department of Homeland  
18 Security for return to their country of origin.

19           5.       After the material witnesses are ordered released by the Court pursuant to this  
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any  
22 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral  
23 attack, that:

24                   a.       The stipulated facts set forth in paragraph 4 above shall be admitted as  
25 substantive evidence;

26                   b.       The United States may elicit hearsay testimony from arresting agents  
27 regarding any statements made by the material witness(es) provided in discovery, and such

1 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements  
2 against interest of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
4 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
5 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
6 waives the right to confront and cross-examine the material witness(es) in this case.

7 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
9 further that defendant has discussed the terms of this stipulation and joint motion with defense  
10 counsel and fully understands its meaning and effect.

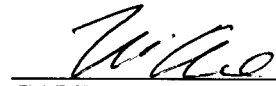
11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
12 immediate release and remand of the above-named material witness(es) to the Department of  
13 Homeland Security for return to their country of origin.

14 It is STIPULATED AND AGREED this date.

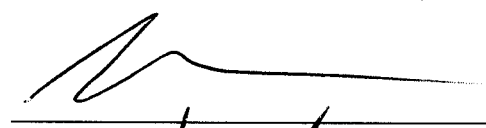
15 Respectfully submitted,

16 KAREN P. HEWITT  
17 United States Attorney

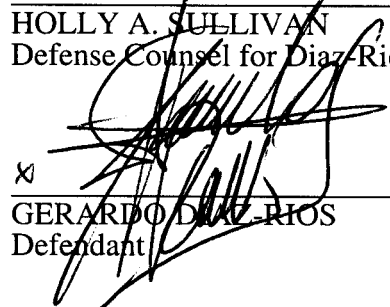
18 Dated: 5/1/08.

19   
20 CALEB E. MASON  
21 Assistant United States Attorney

22 Dated: 4/25/08.

23   
24 HOLLY A. SULLIVAN  
25 Defense Counsel for Diaz-Rios

26 Dated: 4/25/08.

27   
28 GERARDO DIAZ-RIOS  
29 Defendant

**ORDER**

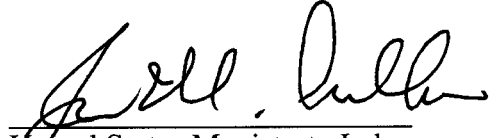
Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 5/1/08.

  
United States Magistrate Judge